



PESTICIDE ESA NEWS

Washington State Department of Agriculture ➔ Endangered Species Program Newsletter



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QUESTIONS?

For more information about the Endangered Species Program, visit our Web site at
agr.wa.gov/PestFert/EnvResources/EndangSpecies.htm

We welcome your input. Please send your comments and questions to the WSDA Endangered Species Program at
esp@agr.wa.gov

Federal appeals court upholds buffer zones

In late June, the U.S. Court of Appeals for the Ninth Circuit upheld the 2004 district court ruling that ordered protections to prevent the potential adverse effects of 54 pesticides on threatened or endangered salmonids. The appeals court also said EPA must consult with NOAA Fisheries biologists about the pesticides' possible effects on 26 distinctive groups of Pacific salmon and steelhead in Washington, Oregon and California.

The Jan. 2004 ruling imposed buffer zones for any of the 54 pesticides determined by EPA as "likely to adversely affect" salmonids. Ground applications are prohibited within 20 yards (60 feet) of salmon-bearing streams in the Pacific Northwest and California. The ruling also requires a buffer zone of 100 yards (300 feet) for aerial applications.

In addition, it also required educational materials at the point of sale to alert pesticide users in urban areas to the potential risks of using seven pesticide active ingredients near salmonid habitat.

The protections will stay in place until EPA completes the consultation process with NOAA Fisheries scientists.

This federal appeals court ruling is only one of many recent decisions that could impact endangered species recovery and agricultural production across the country (see page 2). ➔

WSDA and NASS discussing joint venture

In the future, WSDA may collaborate with the USDA National Agricultural Statistics Service (NASS) - Washington Field Office to gather statistically accurate data about pesticide use.

WSDA has approached NASS about augmenting their agricultural chemical use surveys in Washington state and allowing WSDA to incorporate the survey data into state-specific pesticide use summaries.



The statistical robustness of the data contained in the pesticide use summaries would be enhanced by the large sample size of the NASS surveys. WSDA provides pesticide use summaries to EPA and NOAA Fisheries for their evaluation of the potential effects of pesticides on endangered species.

"This is a great opportunity for NASS and WSDA," said Joe Parsons, Deputy Director of the USDA NASS - Washington Field Office. "We both need accurate data to help the agricultural industry and regulators make sound decisions based on real numbers."

The proposed working arrangement between WSDA and the Washington field office would be similar to existing joint efforts between other state departments of agriculture and their respective National Agricultural Statistics Service field offices.

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Awareness

Action

Recovery

WSDA and NASS discussing joint venture

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Bridget Moran, WSDA endangered species program manager is coordinating the collaboration with Parsons.

“This is a win-win proposal,” said Moran. “Not only can NASS assist WSDA by greatly enhancing the quality of the data we provide EPA and NOAA Fisheries, NASS can also protect the confidentiality and privacy of the information supplied by pesticide applicators. Confidentiality has been a stumbling block in our efforts to gather better data.”

Under the joint agreement, additional survey results would be described on the NASS Web site and available to WSDA and all interested parties. Individuals’ responses are never disclosed. Also, because NASS survey procedures use a single point of contact, the individuals’ burden of responding to several questionnaires would be reduced.

For more information about the activities and publications of the USDA National Agricultural Statistics Service (NASS) - Washington Field Office, visit their Web site at nass.usda.gov/wa/ ➔

Litigation outcomes may influence agriculture

Litigation has been used successfully to enforce compliance with the Endangered Species Act (ESA). Many of the protections for threatened and endangered species have come as a result of court orders (see page 1).

WSDA is providing the following summary of recent decisions that may have an influence on crop protection practices as well as endangered species recovery.



More water ordered spilled for salmon

On June 10, 2005, U.S. District Court Judge James Redden ruled federal dam operators must spill more water over five Snake and Columbia River dams in order to help endangered and threatened salmon migrate to the ocean.

The ruling affects the Lower Granite, Little Goose, Lower Monumental and Ice Harbor Dams on the Snake River, and the McNary Dam on the Columbia River. The spills will begin this month and continue through the end of August. Judge Redden’s decision was appealed. The Ninth Circuit Court did not indicate when it would rule.

Judge rules federal plan fails to protect salmon

Federal Court Judge Redden also ruled in May that NOAA Fisheries’ salmon plan for the Columbia and Snake rivers fails to protect salmon and steelhead. The federal plan concludes that the Columbia River hydro-dams, a series of eight dams between the ocean and Pacific Northwest spawning grounds, will not jeopardize salmon and steelhead or modify or destroy their critical habitat.

"NOAA’s jeopardy analysis is contrary to law, because it does not address the prospects for recovery of the listed species," said Judge Redden. "It is apparent that the listed species are in serious decline and not evidencing signs of recovery." The Endangered Species Act requires NOAA Fisheries to evaluate whether an action will reduce both survival and recovery of a listed species.

Certain hatchery salmon get ESA protection

NOAA Fisheries has placed 131 strains of hatchery salmon under Endangered Species Act protection along with their wild cousins, but is allowing those raised artificially to still be harvested. NOAA Fisheries' scientists felt that there was abundant evidence that hatcheries were valuable in restoring dwindling wild runs in the short term, if not in the long term.

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Certain hatchery salmon get ESA protection

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The new strategy was prompted by a 2001 federal court ruling that stated NOAA Fisheries could no longer consider the same strains of salmon and steelhead different just because one spawned naturally in the wild and one was spawned artificially in a hatchery.

Is proof of harm required to invoke Endangered Species Act

The U.S. Ninth Circuit Court of Appeals recently ruled that courts cannot defer to environmentalists' assertion of harm to a species. The unpublished decision is significant because it is the first time the Ninth Circuit has clarified the type of evidence that must be demonstrated in order for an environmental plaintiff to obtain an injunction under the Endangered Species Act.

An environmental group sued Idaho rancher, Verl Jones, claiming the family was violating the ESA by diverting water for irrigation and killing bull trout protected under the Act. The group presented no evidence that bull trout were being harmed to support their claim.

Maine blueberry growers halt aerial spraying of pesticides

Two of Maine's largest blueberry producers have ended all aerial pesticide applications. The halt to aerial spraying was in response to a coalition of environmental groups' notice of intent to sue the producers for violations of the federal Clean Water Act.

The groups alleged Cherryfield Foods and Jasper Wyman & Son have been violating the Clean Water Act by drifting aerially applied pesticides onto surface waters. The groups contend that an aircraft fitted with pesticide application equipment is a point source pollutant and, therefore, an aerial application requires a Clean Water Act discharge permit.

Both companies stated they never violated state or federal regulations but, in order to avoid costly litigation, they agreed to apply pesticides with a boom sprayer instead of using aircraft.

For more information about these decisions, contact WSDA Endangered Species Program, (360) 902-2067 or by e-mail, esp@agr.wa.gov ➡

Fish Facts: The Nose Knows "No Danger"

We all know salmon find their way back to spawning grounds using their extremely keen sense of smell. But did you know experiments have shown that salmon will slow or stop their migrations when certain human odors are present.

In one study, a solution of one part human skin dissolved in 80 billion parts water was dumped into a river. The scent from the solution stopped migrating salmon for as long as a half hour. Salmon found the smell of an amino acid found in human skin to be a deterrent. The amino acid is called serine and the amount in human skin depends upon the sex, age and race of the individual. ➡



The serine levels in some people's skin may explain why they never have any luck fishing

Information taken from an article by C. Herb Williams, *Pacific Search*, November 1978.